

United States District Court
Southern District of New York

-----X

David Shatz

Plaintiff,

-against-

Docket No. 07-CV-7129 (Robinson, J.)

NOTICE OF MOTION

Linda Strumpf Esq.

Defendant

-----X

PLEASE TAKE NOTICE, that upon the annexed Declaration of Linda Strumpf, Esq., dated November 27, 2007, and the exhibits annexed thereto, the accompanying Memorandum of Law, and upon all the pleadings and proceedings heretofore had herein, defendant Linda Strumpf, Esq., shall make a motion before the Hon. Stephen C. Robinson, at the United States Courthouse for the Southern District of New York, 300 Quarropas Street, Room 633, White Plains, New York 10601, to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(5) based on plaintiff's failure to serve the summons and complaint on defendant, and for such other and further relief as this Court may deem just and proper.

TAKE FURTHER NOTICE that answering papers, if any, are to be served within 10 business days of service of this motion.

Dated: November 27, 2007

Respectfully Submitted,

/s/ *Linda Strumpf* _____
Linda Strumpf, Esq. (LS 2948)
Defendant Pro Se
244 Colonial Road
New Canaan, Ct. 06840
212-566-6800

TO: Law Office of Shmuel Klein P.C.
268 West Route 59
Spring Valley, NY 10977

United States District Court
Southern District of New York

-----X

David Shatz

Plaintiff,

-against-

Docket No. 07-CV-7129 (Robinson, J.)

DECLARATION OF LINDA STRUMPF

Linda Strumpf Esq.

Defendant

-----X

Linda Strumpf, hereby declares, pursuant to 28 U.S.C. §1746, as follows:

1. I am an attorney duly admitted to practice law in the State of New York in 1976 and before this Court in 1977. I make this declaration based upon my personal knowledge of the facts and on information I have learned by reason of a review of the documentation maintained in my office.

2. I just received in the mail an Affirmation for Judgment by Default, with a Statement of Damages and Exhibits, addressed to my Connecticut address¹. I was never served with the summons and complaint in this action.

3. In Plaintiff's attorney's affirmation for a default judgment, he claims that he served a copy of the summons and complaint with a Waiver of Service of Summons on August 13, 2007 by first class mail and certified mail. (¶ 5, Affirmation of Shmuel Klein). However, the undersigned never received the summons and complaint. On or about August 15, 2007,

¹ I respectfully note that plaintiff's papers fail to conform with the required Rules, F. R. Civ. P. 55 and Local Civil Rule 55.2.

I moved my New York office to 2 West Road, South Salem, New York. This is public information, since it is listed on the New York State Unified Court System Website (annexed hereto as Exhibit A), which may be accessed by anyone.

4. Plaintiff then claims that I was served by “Service on a Corporation by the Secretary of State of New York” (§ 5, Affirmation of Shmuel Klein). Plaintiff attaches an “Affidavit of Service on a Corporation by the Secretary of State” as Exhibit C. The Affidavit of Service states service was made upon “Linda Strumpf, Esq. d/b/a Linda Strumpf, Inc.”

5. Approximately 10 years ago I formed a corporation, “Linda Strumpf, Inc.” to commence a business outside of my law practice. “Linda Strumpf, Inc.” is presently out of business, and the corporation was dissolved a number of years ago. In fact, the corporation is listed as “Inactive” on the New York State Department of State Website. (Annexed hereto as See Exhibit B).

6. The defendant in this case is the individual, Linda Strumpf - “Linda Strumpf, Esq.” I never practiced law as a corporation and Linda Strumpf, Esq. never did business as “Linda Strumpf, Inc.”. In fact, to the best of my knowledge a corporation cannot practice law. Clearly, the Secretary of State is not authorized to accept service on my behalf as an attorney, as I am not registered as a corporation with the Secretary of State. Further, “Linda Strumpf, Esq. d/b/a Linda Strumpf, Inc.” is not the plaintiff in this action, and does not exist. As an attorney, I never “did business as” “Linda Strumpf, Inc.”.

I declare under the penalty of perjury that the foregoing is true and correct. Executed
on November 27, 2007

/s/ Linda Strumpf _____
Linda Strumpf

United States District Court
Southern District of New York

-----X

David Shatz

Plaintiff,

-against-

Docket No. 07-CV-7129 (Robinson, J.)

DECLARATION OF SERVICE

Linda Strumpf Esq.

Defendant

-----X

Linda Strumpf, hereby declares, pursuant to 28 U.S.C. §1746, as follows:

On November 27, 2007 deponent served the attached:

1) Notice of Motion to Dismiss the Complaint

2) Declaration of Linda Strumpf With Attached Exhibits

in the above-captioned matter on the Attorney for Plaintiff by depositing true copies thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed as follows:

Law Office of Shmuel Klein P.C.
268 West Route 59
Spring Valley, NY 10977

I declare under the penalty of perjury that the foregoing is true and correct. Executed on November 27, 2007.

Linda Strumpf

Docket No. 07-CV-7129 (Robinson, J.)

United States District Court
Southern District of New York

David Shatz
Plaintiff,
-against-

Linda Strumpf Esq.
Defendant

Notice of Motion to Dismiss Complaint

Declaration of Linda Strumpf with Exhibits

LINDA STRUMPF
Defendant Pro Se
244 Colonial Road
New Canaan, Ct. 06840
Tel: 212-566-6800
Fax: 212-566-6808

TO: Law Office of Shmuel Klein P.C.
268 West Route 59
Spring Valley, NY 10977
